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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,431	12/15/2000	Lorin Evan Ullman	AUS9-2000-0704-US1	1895

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Joseph R. Burwell
Law Office of Joseph R. Burwell
P.O. Box 28022
Austin, TX 78755-8022

EXAMINER

VU, THONG H

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 05/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/737,431

Applicant(s)

ULLMAN, LORIN EVAN

Examiner

Thong H Vu

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5</u> . | 6) <input type="checkbox"/> Other: _____ |

1. Claims 1-24 are pending.

Claim Rejections - 35 USC § 112

2. Claims 1, 9 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. (i.e.: a mission criticality characteristic is not defined in specification).

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 09/737,434. Although the conflicting claims are not identical, they are not patentably distinct from each other because

(Application 09/737,434, claim 10).

A apparatus for managing a distributed data processing system, the apparatus comprising:

configuring means for configuring monitoring parameters for network interface cards within the distributed data processing system using a network management framework;

discovering means for dynamically discovering a set of discovered endpoints within the distributed data processing system;

designating means for designating a plurality of discovered endpoints as mission critical endpoints;

first associating means for associating a mission critical twin endpoint with each mission critical endpoint, wherein a mission critical twin endpoint is a discovered endpoint that has a communication history with a mission critical endpoint with which the mission critical twin endpoint is being associated.

(Application 09/737,431, claim 9)

An apparatus for managing a distributed data processing system, the apparatus comprising:

configuring means for configuring monitoring parameters for network interface cards within the distributed data processing system using a network management framework;

discovering means for dynamically discovering endpoints within the distributed data processing system;

first determining means for determining that a device within the distributed data processing system has at least a first discovered endpoint representing a first network interface card and a second discovered endpoint representing a second network interface card; and

assigning means for assigning a mission criticality characteristic to each discovered endpoint.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-24 are rejected under 35 U.S.C. § 102(e) as being anticipated by DuLac et al [DuLac 5,748,871].

5. As per claim 9, DuLac discloses an apparatus for managing a distributed data processing system, the apparatus comprising:

configuring means for configuring monitoring parameters for network interface cards within the distributed data processing system using a network management framework [DuLac, detect and correct data, col 7 lines 20-48];

discovering means for dynamically discovering endpoints within the distributed data processing system;

first determining means for determining that a device (i.e.: a node) within the distributed data processing system has at least a first discovered endpoint representing a first network interface card [DuLac, a first network adapter, col 7 lines 20-48] and a second discovered endpoint representing a second network interface card [DuLac, a second network adapter, col 7 lines 20-48]; and

assigning means for assigning a mission criticality characteristic to each discovered endpoint [DuLac, provide services to users, col 6 lines 6-12].

6. As per claims 10,11 DuLac discloses first designating Means for designating each of a plurality of network interface cards with a monitoring parameter indicating that each of the plurality of network interface cards as a twin network interface card that is to be used for monitoring an associated network interface card [The twin or identical NIC is a inherent feature of a first and second NIC, DuLac, a first and second network adapter, col 7 lines 20-48]; and second designating means for designating each of a plurality of network interface cards with a monitoring parameter indicating that each of the plurality of network interface cards is not to be used for monitoring as inherent feature of monitoring parameters. It was clearly the parameters indicated a network status (i.e.: new device, error condition, connection failed, down, unknown, true) and subsequent action (i.e.: restart, updated, reroute).

7. As per claim 12, DuLac discloses monitoring means for monitoring discovered endpoints using the network management framework (i.e.: program) [DuLac, programs supporting system and network management, col 3 line 53-col 4 line 7].

8. As per claims 13,14 DuLac discloses determining, in response to a determination that a discovered endpoint is a mission critical endpoint, whether the mission critical endpoint is associated with a Mission critical twin endpoint; first performing means for performing, in response to a determination that the mission critical endpoint is associated with a mission critical twin endpoint, a polling operation on the mission critical twin endpoint; first updating means for updating a status indication parameter for the mission critical twin endpoint as inherent feature of monitoring parameters.

9. As per claim 15, DuLac discloses receiving means for receiving a request for an action on a target endpoint within the network management framework (i.e.: program) [DuLac, programs supporting system and network management, col 3 line 53-col 4 line 7].

10. As per claim 16 DuLac discloses determining, in response to a determination that the target endpoint is a mission critical endpoint, whether the target endpoint is associated with a mission critical twin endpoint; and rerouting means for rerouting, in response to a determination that the target endpoint is associated with a mission critical

twin endpoint, the request for the action to the mission critical twin endpoint as inherent feature of monitoring parameters.

11. Claims 1-8 and 17-24 contain the similar limitations set forth of apparatus claims 9-16. Therefore, claims 1-8 and 17-24 are rejected for the similar rationale set forth in claims 9-16.

12. Claims 1-24 are rejected under 35 U.S.C. § 102(e) as being anticipated by Eady et al [Eady 6,304,788 B1]

13. As per claim 9, Eady discloses an apparatus for managing a distributed data processing system, the apparatus comprising:

configuring means for configuring monitoring parameters for network interface cards within the distributed data processing system using a network management framework [Eady, confirm the validity of the client and data, col 5 lines 20-34; identifying parameters, col 5 lines 45-67];

discovering means for dynamically discovering endpoints within the distributed data processing system [Eady, monitoring devices, col 2 lines 15-21];

first determining means for determining that a device (i.e.: server) within the distributed data processing system has at least a first discovered endpoint representing a first network interface card and a second discovered endpoint representing a second network interface card [Eady, a server with one more NICs, col 2 lines 22-30]; and

assigning means for assigning a mission criticality characteristic to each discovered endpoint [Eady, retrieve instructions, col 5 lines 45-60].

14. As per claims 10,11 Eady discloses first designating Means for designating each of a plurality of network interface cards with a monitoring parameter indicating that each of the plurality of network interface cards as a twin network interface card that is to be used for monitoring an associated network interface card [Eady, a server with one more NICs, col 2 lines 22-30]; and second designating means for designating each of a plurality of network interface cards with a monitoring parameter indicating that each of the plurality of network interface cards is not to be used for monitoring as inherent feature of monitoring parameters.

15. As per claim 12, Eady discloses monitoring discovered endpoints using the network management framework [Eady, CGI script, col 4 lines 56-67].

16. As per claims 13,14 Eady discloses determining, in response to a determination that a discovered endpoint is a mission critical endpoint, whether the mission critical endpoint is associated with a Mission critical twin endpoint; first performing means for performing, in response to a determination that the mission critical endpoint is associated with a mission critical twin endpoint, a polling operation on the mission critical twin endpoint; first updating means for updating a status indication parameter for the mission critical twin endpoint as inherent feature of monitoring parameters.

17. As per claim 15, Eady discloses receiving means for receiving a request for an action on a target endpoint within the network management framework [Eady, CGI script, col 4 lines 56-67].

18. As per claim 16, Eady discloses determining, in response to a determination that the target endpoint is a mission critical endpoint, whether the target endpoint is associated with a mission critical twin endpoint; and rerouting means for rerouting, in response to a determination that the target endpoint is associated with a mission critical twin endpoint, the request for the action to the mission critical twin endpoint as inherent feature of monitoring parameters.

19. Claims 1-8 and 17-24 contain the similar limitations set forth of apparatus claims 9-16. Therefore, claims 1-8 and 17-24 are rejected for the similar rationale set forth in claims 9-16.

20. Claims 1-24 are rejected under 35 U.S.C. § 102(e) as being anticipated by Allain et al [Allain 6,449,259 B1]

21. As per claim 9, Allain discloses an apparatus for managing a distributed data processing system, the apparatus comprising:

configuring means for configuring monitoring parameters for network interface cards within the distributed data processing system using a network management framework [Allain, monitoring the QoS of the networks, col 5 lines 15-65];

discovering means for dynamically discovering endpoints within the distributed data processing system [Allain, QoS monitor module, col 5 line 66-col 6 line 63];

first determining means for determining that a device within the distributed data processing system has at least a first discovered endpoint representing a first network interface card and a second discovered endpoint representing a second network interface card [Allain, gateway ports 208,210,212,214, Fig 2 col 11 lines 21-40]; and

assigning means for assigning a mission criticality characteristic to each discovered endpoint [Allain, criteria signal data, col 6 line 64-col 7 line 14,35-67;col 10 lines 35-52;col 12 lines 27-39].

22. As per claims 10,11 Allain discloses the configuring means further comprises: first designating Means for designating each of a plurality of network interface cards with a monitoring parameter indicating that each of the plurality of network interface cards as a twin network interface card that is to be used for monitoring an associated network interface card; and second designating means for designating each of a plurality of network interface cards with a monitoring parameter indicating that each of the plurality of network interface cards is not to be used for monitoring as inherent feature of monitoring parameter (i.e.: QoS address=0000).

23. As per claim 12, Allain discloses monitoring discovered endpoints using the network management framework [Allain, QoS monitor module, col 5 line 66-col 6 line 63]

24. As per claims 13,14 Allain discloses determining, in response to a determination that a discovered endpoint is a mission critical endpoint, whether the mission critical endpoint is associated with a Mission critical twin endpoint; first performing means for performing, in response to a determination that the mission critical endpoint is associated with a mission critical twin endpoint, a polling operation on the mission critical twin endpoint; first updating means for updating a status indication parameter for the mission critical twin endpoint as inherent feature of monitoring parameters.

25. As per claim 15, Allain discloses receiving means for receiving a request for an action on a target endpoint within the network management framework [Allain, QoS monitor module, col 5 line 66-col 6 line 63].

26. As per claim 16, Allain discloses determining, in response to a determination that the target endpoint is a mission critical endpoint, whether the target endpoint is associated with a mission critical twin endpoint; and rerouting means for rerouting, in response to a determination that the target endpoint is associated with a mission critical twin endpoint, the request for the action to the mission critical twin endpoint as inherent feature of monitoring parameters.

27. Claims 1-8 and 17-24 contain the similar limitations set forth of apparatus claims 9-16. Therefore, claims 1-8 and 17-24 are rejected for the similar rationale set forth in claims 9-16.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

28. Claims 1-24 are rejected under 35 U.S.C. § 103 as being unpatentable over Walker et al [Walker 6,061,723] in view of Brownmiller et al [Brownmiller, 5,768,255]

29. As per claim 9, Walker discloses an apparatus for managing a distributed data processing system, the apparatus comprising:

configuring means for configuring monitoring parameters for network interface cards within the distributed data processing system using a network management framework [Walker, network monitoring processes, col 4 lines 29-37];

discovering means for dynamically discovering endpoints within the distributed data processing system [Walker, discovery the topology of a plurality of network interfaces associated with the plurality of network elements, col 3 lines 37-60];

first determining means for determining that a device (i.e.: Network node manager) within the distributed data processing system has at least a first discovered

endpoint representing a first network interface card and a second discovered endpoint representing a second network interface card [Walker, discovery the topology of a plurality of network interfaces associated with the plurality of network elements, col 3 lines 37-60]; and

assigning means for assigning a mission criticality characteristic to each discovered endpoint [Walker, assigning a UUID to the first and second interfaces, col 18 lines 65-67].

30. As per claims 10,11 Walker discloses first designating Means for designating each of a plurality of network interface cards with a monitoring parameter indicating that each of the plurality of network interface cards as a twin network interface card that is to be used for monitoring an associated network interface card [Walker, discovery the topology of a plurality of network interfaces associated with the plurality of network elements, col 3 lines 37-60];

However Walker does not detail designating each of a plurality of network interface cards with a monitoring parameter indicating that each of the plurality of network interface cards is not to be used for monitoring as inherent feature of monitoring parameters.

It was well-known in the network monitoring art that system could automatically monitored the network devices or will not monitored unless specified by a customer, Brownmiller,col 11 lines 55-67; or the service request indicates that no monitoring reuired, col 13 lines 57-64].

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the technique of monitoring the network devices unless specified by user as taught by Brownmiller into the Walker's apparatus in order to utilize the analyzing process. Doing so would provide a quality service and reduce the traffic over network.

31. As per claim 12, Walker-Brownmiller disclose monitoring means for monitoring discovered endpoints using the network management framework [Walker, OpenView Network Node Manager, col 2 lines 10-23].

32. As per claims 13,14 Walker-Brownmiller disclose determining, in response to a determination that a discovered endpoint is a mission critical endpoint, whether the mission critical endpoint is associated with a mission critical twin endpoint; first performing means for performing, in response to a determination that the mission critical endpoint is associated with a mission critical twin endpoint, a polling operation on the mission critical twin endpoint; first updating means for updating a status indication parameter for the mission critical twin endpoint as inherent feature of monitoring process.

33. As per claim 15, Walker-Brownmiller disclose receiving means for receiving a request for an action on a target endpoint within the network management framework [Walker, OpenView Network Node Manager, col 2 lines 10-23].

34. As per claim 16, Walker-Brownmiller disclose fourth determining means for determining, in response to a determination that the target endpoint is a mission critical endpoint, whether the target endpoint is associated with a mission critical twin endpoint; and rerouting means for rerouting, in response to a determination that the target endpoint is associated with a mission critical twin endpoint, the request for the action to the mission critical twin endpoint as inherent feature of monitoring process.

35. Claims 1-8 and 17-24 contain the similar limitations set forth of apparatus claims 9-16. Therefore, claims 1-8 and 17-24 are rejected for the similar rationale set forth in claims 9-16.

36. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Thong Vu, whose telephone number is (703)-305-4643.

The examiner can normally be reached on Monday-Thursday from 8:00AM- 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Jack Harvey*, can be reached at (703) 305-9705.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9700.

Any response to this action should be mailed to: Commissioner of Patent and Trademarks, Washington, D.C. 20231 or faxed to :

After Final (703) 746-7238

Official: (703) 746-7239

Non-Official (703) 746-7240

Hand-delivered responses should be brought to Crystal Park 11,2121 Crystal Drive, Arlington. VA., Sixth Floor (Receptionist).

Thong Vu
Patent Examiner
Art Unit 2142

